IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8153 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHUGIRI JIVANGIRI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

MR DASHRATH R. CHAUHAN

for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 11/4/2000 Annexure : A passed by

Respondent No.1 which he has passed in exercise of powers conferred upon him under Sec.3(2) of the Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on five criminal cases under Indian Penal Code lodged in Pradyumannagar Police Station of Rajkot City against the detenu. That all five cases are pending with the Investigating Officer for investigation. The detaining authority also placed reliance on statements of two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of two witnesses on 8/4/2000 and on 11/4/2000 respectively, and passed an order of detention which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Mr.Chauhan, the learned advocate for the petitioner has argued that the detaining authority has placed reliance of statements of two un-named witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act but looking to the respective dates of statements, date of verification of said statements and date of passing order of detention, said claim of privilege is not genuine, and therefore, it violates mandate given in Art.22(5) of the Constitution of India.

4. Mr. Chauhan, the learned advocate for the petitioner has argued that looking to the grounds of detention, while passing an order of detention, the detaining authority has stated in grounds of detention that he has taken into consideration the provisions of Sec.56 and 57 of the Bombay Police Act 1951 which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. He has further argued that the detaining authority has taken into consideration less drastic remedy which was not available to him for passing an order of detention, and therefore, this is a case of total non-application of

mind of the detaining authority.

5. Shri Chauhan has cited an authority of JAYANTI NENUMEL RAMNANI VS. COMMISSIONER OF POLICE, RAJKOT, AND OTHERS, reported in 2000(2) G.L.H. 166, wherein it has been held that the question does not arise for considering less drastic remedy, when it was not available to the detaining authority. He has taken into consideration the provisions of Sec.56 and 57 (c) of the Bombay Police Act, 1951 which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. This fact itself shows non-application of mind on the part of the detaining authority. The facts of the present case squarely fall within the four corners of the case cited by Shri Chauhan.

6. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 11/4/2000 passed by Respondent No. 1 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to detain further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 3/10/2000. (H.H.MEHTA,J.)
ccshah